

**Notice of Allowability**

Application No.

09/828,592

Applicant(s)

WALSTON ET AL.

Examiner

Art Unit

Robert B Mondesi

1653

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to February 19, 2004.
2. ☒ The allowed claim(s) is/are 25-37, 39 and 40.
3. ☒ The drawings filed on April 6, 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

## **DETAILED ACTION**

### ***Status of the claims***

This office action in response to correspondence filed November 21, 2003.

**Claims 1-24** have been canceled. **Claims 25, 28, 31 and 32** have been amended. **Claims 25-48** are pending in this application. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). **Claims 35-48** are withdrawn.

### ***Withdrawal of Objections and Rejections:***

The objection of **claim 28** because of an informality is withdrawn.

The rejection of **claims 25-34** under 35 U.S.C § 101 as being drawn to non-statutory subject matter is withdrawn.

The rejection of **claims 25-29** under 35 U.S.C § 112, first paragraph is withdrawn. The amino acid substitutions proposed by the applicant in the claims are conservative substitutions. A written description of the mentioned substitution has been provided in the specification on page 10, lines 20-23.

The rejection of **claims 25 and 28** under 35 U.S.C § 112, second paragraph is withdrawn.

The rejection of **claims 25-34** under 35 U.S.C § 103(a) as being unpatentable over Jakubowski in view of Shirik is withdrawn.

### ***Examiner's Amendment:***

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An **Examiner's Amendment** to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Charles L. Leeck on February 13, 2004.

***Examiner's Amendments to the Claims:***

25. (amended) An isolated modified antithrombin protein having an H-helix, wherein at least one amino acid of the H-helix is [modified] substituted in order for the H-helix to have a more positive charge than an H-helix of a non-modified antithrombin protein.

28. (amended) The modified antithrombin protein of claim 25, wherein the at least one amino acid of the H-helix that is [modified] substituted in order for the H-helix to have a more positive charge than an H-helix of a non-modified antithrombin protein is in the region of amino acids 304-314 of the modified antithrombin protein.

39. (amended) The method of claim [38] 37, wherein the modified antithrombin has one or more amino acids in the region of amino acids 304-314 [modified] substituted in order to have a more positive charge than the non-modified antithrombin.

40. (amended) The method of claim [39] 38, wherein the modified antithrombin has one or more of the following amino acid substitutions : D309K, E310K, E312K, E313K, D309R, E310R, E312R, E313R.

### ***Conclusion***

**Claims 25-34** are allowed.


**Claims 25-34** are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), **claims 35-37 and 39-40** are directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Process **claims 35-37 and 39-40** hereby rejoined and fully examined for patentability under 37 CFR 1.104. In accordance with the Official Gazette notice, *supra*, process **claims 38, 41-44**, which do not depend from or otherwise include all the limitations of the allowable product, are NOT been rejoined. **Claims 45-48**, not directed to the process of making or using the patentable product, will not be rejoined.

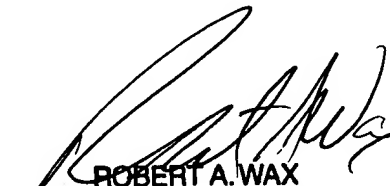
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B Mondesi whose telephone number is 571-272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert B. Mondesi  
Patent Examiner  
Group 1653  
2-19-04

  
ROBERT A. WAX  
PRIMARY EXAMINER